IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1763 of 2006
with
FIRST APPEAL No. 1764 of 2006
to
FIRST APPEAL No. 1797 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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SPECIAL LAQ OFFICER (NAHER YOJNA) & 1 - Appellant(s)
Versus
KANUBHAI LAXMANBHAI & 1 - Respondent(s)

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Appearance :
MR SUNIT SHAH, GOVERNMENT PLEADER for Appellants
MR AJ PATEL for Claimant(s)-Respondents
MR AD OZA, for Respondent(s): 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/06/2006

COMMON ORAL JUDGMENT (Per:HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of Notice on behalf of the claimant/ claimants in each Appeal. Mr.A.D.Oza, learned counsel, waives service of Notice on behalf of the Executive Engineer, Narmada Yojna, Naher Vibhag, Kevadia Colony, Sardar Sarovar Narmada Nigam Limited, in each Appeal. Having regard to the facts of the case, all the Appeals are taken up for final disposal today.

2. All the above numbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated May 12, 2004, rendered by the learned Incharge Joint District Judge and Additional Sessions Judge, Bharuch at Rajpipla, in Land Acquisition

Reference Case Nos.985 of 2002 to 992 of 2002 and Land Acquisition Reference Case Nos.1030 of 2002 to 1056 of 2002, by which the Reference Court has awarded additional compensation of Rs.13/- per sq.mt. to the claimants over and above the compensation awarded by the Special Land Acquisition Officer at the rate of Rs.2/- per sq.mt. for their acquired lands.

3. Two proposals were received by the State Government to acquire the agricultural lands of village Khadgada, Taluka: Nandod, District: Bharuch, for the public purpose of construction of canal of Narmada Yojna. On perusal of the said proposals, the State Government was satisfied that the agricultural lands of village: Khadgada were likely to be needed for the said public purpose. Therefore, two Notifications under Section 4 of the Act were issued, which were published in the official gazette on February 3, 1994 and March 31, 1994. Thereafter, the land owners were served with notices under Section 4 of the Act. They filed their objections against the proposed

acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that agricultural lands specified in two Notifications published under Section 4(1) of the Act were needed for public purpose of construction of canal of Narmada Yojna. Therefore, two declarations under Section 6 of the Act were made which were published in the official gazette on February 4, 1995 and February 9, 1995. The interested persons were thereafter served with notices for determining compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200 per are, i.e. Rs.20 per sq.mt. Having regard to the materials placed before him, the Special Land Acquisition Officer, by two different awards dated April 29, 1995 and July 24, 1995, offered compensation to the claimants at the rate of Rs.2 per sq.mt. The claimants

were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted written applications requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly, references were made to the District court, Bharuch at Rajpipla, which were numbered as noticed earlier.

4. In support of the claim for enhanced compensation, the claimants examined witness Kanubhai Laxmanbhai Tadvi at Ex.16. The witness produced previous award of Reference Court relating to the lands of village Sanjroli which was earlier exhibited with consent of the parties at Ex.15. No witness was examined nor any document was produced either by the State Government or the acquiring body. After considering the evidence adduced by the claimants, the Reference Court was of the view that previous award produced by the claimants relating to the lands of village Sanjroli was a

relevant piece of evidence and furnished good guidance for determining market value of the lands acquired in this case. Placing reliance on the said previous award, the Reference Court has awarded additional compensation at the rate of Rs.13/- per sq.mt. over and above compensation paid to the claimants at the rate of Rs.2/- per sq.mt. by common judgment and award dated May 12, 2004, giving rise to above numbered appeals.

5. This Court has heard Mr.Sunit Shah, learned Government Pleader, as well as Mr.A.J.Patel, learned counsel for the claimants and Mr.A.D.Oza, learned counsel for the acquiring body at length and in great detail. This Court has also considered the evidence forming part of record of the Reference Court.

6. In order to decide the question whether just compensation has been determined by the Reference court, it would be necessary to refer to the testimony of witness Kanubhai Tadvi recorded at Ex.16. His testimony indicates that his land was also acquired and therefore, he had

sought reference which was registered as Land Reference Case No.1050 of 2002. According to him, the lands acquired were highly fertile and that the claimants were growing the crops of cotton, Tuvar, maize, vegetables, etc. on the acquired lands. The witness mentioned in his testimony that each claimant was able to grow 15 quintals of cotton per acre per year and from the sale of the same, each claimant was getting net profit of Rs.15,000/- to Rs.20,000/- per year. It was further claimed by him that the claimants were growing Tuvar and vegetables on the acquired lands from the sale of which they were getting Rs.70,000/- to Rs.75,000/- per year. What was asserted by him was that each claimant was able to earn Rs.25,000/- on an average per year. It was mentioned by him that just near the acquired lands, Kevadia-Vadodara road was passing and village Kevadia was situated at a distance of 3 kms. from his village. The witness further mentioned in his testimony that from his village, village Pan Talavadi and village Vaviyala were situated at a

distance of 3 kms. whereas village Sanjroli was also situated at a distance of 3 kms. The witness produced the award dated January 23, 2004, of the Reference Court, rendered in respect of lands of village Sanjroli in Land Reference Case No.191 of 1993 vide Ex.15 in support of his claim for enhanced compensation. The witness further asserted that the market value of lands acquired from village Sanjroli was assessed at Rs.1100/- per are. What was mentioned by the witness was that the sim of village Sanjroli was adjacent to the sim of village Khadgada and Pan Talavadi. It was also mentioned by the witness that he had seen the lands of village Sanjroli which were acquired earlier and that the lands of village Sanjroli were similar to the lands acquired in the instant case. It was stated by the witness that the lands acquired in the instant case had same fertility and advantages as the lands which were acquired from village Sanjroli, and therefore, in view of time gap between the Notification published under Section 4(1) of the Act for

acquiring the lands of village Sanjroli and the Notifications published under Section 4(1) of the Act for acquiring the lands in the instant case, 10% rise should be given to the claimants while determining compensation payable to them. It was also mentioned by the witness that village Suka was situated at a distance of 1 km. from his village and that from village Suka, main canal of Narmada Yojna was passing. According to this witness, the claimants were cultivating the lands after getting water from the canal which was passing from village Suka. It was also mentioned that there was a well in the lands acquired from which also water was being obtained for cultivation. According to this witness, the main canal of Narmada Yojna was at a distance of 300 feet away from the acquired lands and that the water was available round the year as there was no further outlet of water beyond village Suka.

In cross-examination by the Special Land Acquisition Officer and State Government, the witness mentioned that he had not produced any

map to indicate that his village was situated adjacent to village Sanjroli. The witness admitted that no accounts were maintained by the claimants to indicate as to what income was received by them from sale of agricultural produces. It was also admitted by him that no accounts were maintained to indicate the income derived from sale of maize, Tuvar and vegetables. The suggestion made by the cross examiner that no report of Geologist was obtained to indicate that the lands of village Sanjroli and the lands of village Khadgada were similar was accepted by the witness. The suggestion made on behalf of the opponents No.1 and 2 that no evidence was adduced to indicate that fertility of the lands of the two villages was same was denied by him. It was admitted by the witness that no document was produced by him to show that there was rise in price of lands with the passage of time. The suggestion made to the witness that the award of the Special Land Acquisition Officer was based on the fertility of the lands acquired and income derived

therefrom, was denied. The suggestion made to the witness that a just compensation was awarded to the claimants by the Special Land Acquisition Officer was also denied by him.

In cross-examination on behalf of the acquiring body, it was admitted by the witness that he had not maintained any books of accounts indicating the income derived from sale of agricultural produces and cost incurred for growing those agricultural produces. The witness admitted that his village was a small village and was not densely populated. It was also admitted by him that no big industries were situated near his village. It was further admitted by him that he had no written evidence to indicate that the claimants were cultivating the lands after obtaining water from Narmada canal. The suggestion made to this witness that in the area surrounding the village, forests were situated was emphatically denied by him. It was further admitted by the witness that there was no place near his village where agricultural produces obtained from agricultural operations could be

sold in bulk. The suggestion made to the witness that just compensation was paid to the claimants but a false claim for enhanced compensation was advanced was also emphatically denied by him.

7. This is all what transpires from the testimony of witness Kanubhai who was examined on behalf of the claimants. Ex.15, which is previous award of the Reference Court, makes it more than clear that, it was rendered in respect of lands of village Sanjroli which were acquired for public purpose of construction of Ankleshwar-Sanjroli road, pursuant to publication of Notification issued under Section 4 of the Act, in the official gazette on October 4, 1990. It is also evident from the said previous award that having regard to the materials placed by the claimants, the Reference Court awarded compensation to the claimants, at the rate of Rs.11/- per sq.mt. It may be stated that though the Special Land Acquisition Officer, the State Government and the acquiring body were duly served and represented through their lawyers, no evidence worth the name was adduced by any of them for

consideration of the Reference Court. A bare reading of the testimony of witness Kanubhai examined by the claimants makes it evident that the assertion made by him that the lands acquired in this case were similar in all respects to the lands which were subject matter of the previous award was not challenged in his cross-examination at all. That evidence was allowed to go unchallenged. It is well settled that when a fact is allowed to go unchallenged, the Court may accept the same as true. The testimony of witness Kanubhai makes it more than clear that the lands of village Sanjroli and lands of village Khadgada were similar in all respects including the fertility. Under the circumstances, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award for the purpose of determining the compensation payable to the claimants in the instant case.

8. The argument advanced by the learned Government Pleader, on the basis of the decision in *Viluben Jhalejar Contractor (Dead) by Lrs. v.*

State of Gujarat – (2005)4 SCC 789, that the comparable instance, namely, the previous award of the Reference Court was neither rendered in respect of lands which were proximate to the lands acquired in the instant case nor suitable adjustments were made having regard to various positive and negative factors and therefore, the Appeals should be entertained, has no substance. It is true that in *Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat* (supra), the Supreme Court has ruled that comparable instances of sale of lands which have proximity from time angle as well as situation angle can be considered and suitable adjustments should be made having regard to various positive and negative factors, and that this principle will also be applicable in case of previous award, this Court finds that the lands which were subject matter of previous award were proximate to the lands which were acquired in the instant case, which is evident from the testimony of witness examined on behalf of the claimants. No negative factors could be brought on record by

the appellants to persuade the Reference Court to hold that the previous award in respect of lands of village Sanjroli was irrelevant or that suitable adjustments should be made while determining market value of the lands acquired in this case, on the basis of said previous award. Further, the assertion made by the witness examined on behalf of the claimants that the lands of both the villages were similar could not be demonstrated to be untrue during his cross-examination. Under the circumstances, the instant Appeals cannot be accepted on the basis of decision rendered by the Supreme Court in *Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat* (supra).

9. The plea, based on the principles laid down in *ONGC Ltd. v. Sendhabhai Vastram Patel and others – (2005)6 SCC 454*, that when the Reference Court passes award solely on the basis of testimony of a witness ignoring the Deeds of sale produced before the Land Acquisition Collector and relies on awards made in certain cases which had not attained finality, the impugned award should be

set aside, cannot be accepted because while passing the award impugned in the Appeals, the Reference Court in this case has not solely relied upon the testimony of the witness examined by the claimants but has also taken into consideration the previous award which was produced for its consideration. Further, from the facts of *ONGC Ltd. v. Sendhabhai Vastram Patel and others* (supra), it is evident that the award made earlier had not attained finality. Here, in this case, it is an admitted position that the previous award relied upon by the Reference Court has attained finality. It is not the case of the appellants that the previous award relied upon by the Reference Court was challenged in higher forum and that either it was set aside or modified in any manner by the appellate Court. Thus, the enhanced compensation computed by the Reference Court cannot be set aside on the basis of principles laid down in *ONGC Ltd. v. Sendhabhai Vastram Patel and others* (supra).

10. The learned Government Pleader further argued

that in view of the decision of the Supreme Court in *Special Land Acquisition Officer v. Indian Standard Metal Co. Ltd. - (2005)9 SCC 759,* the matter should be remanded to the Reference Court for decision afresh after affording opportunity to both the parties to lead evidence in support of their respective claims as neither sufficient evidence was produced for consideration of the Reference Court nor relevant factors were considered by the Reference Court. Having considered the decision of the Supreme Court rendered in *Special Land Acquisition Officer v. Indian Standard Metal Co. Ltd.* (supra), this Court is of the opinion that no ground is made out by the learned counsel for the appellants to remand the case to the Reference Court for fresh decision at all. It may be mentioned that the Special Land Acquisition Officer, the State Government and the acquiring body were duly served. They were represented through their lawyers. At no point of time, any attempt worth the name was made by any of them to adduce any evidence in support of their claim that the claimants were

not entitled to enhanced compensation. It is well settled principle of law that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the Notification under Section 4(1), and the methods of valuation may be; (i) opinion of experts, (ii) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages, and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Here, in this case, no sale deed was produced by any of the parties for consideration of the Reference Court nor the claimants had claimed compensation on the yield basis. As explained by the Supreme Court in *State of Gujarat and others v. Rama Rana and others – (1997)2 SCC 693,* the Court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal prudent man, i.e. whether he would be willing to purchase the land

at the rates proposed by the Court. What is emphasized therein is that on the touchstone of this, the Courts should evaluate the evidence objectively and dispassionately and reach a finding on compensation. Having subjected the testimony of witness Kanubhai to critical examination, this Court finds that sufficient evidence was led by him in support of the claim of the claimants for enhanced compensation. Nobody prevented either the State Government or the acquiring body from producing the evidence before the Reference Court and therefore, the matters cannot be remanded so as to enable the acquiring body or the State Government to fill up the gaps after lapse of long time.

11. The contention that village Sanjroli is not situated near village Khadgada and therefore, the previous award relating to lands of village Sanjroli could not have been relied upon also has no substance. As explained by the Supreme Court in *Thakarsibhai Devjibhai & Ors. v. Executive Engineer, Gujarat & Anr. - 2001(2) GLH 583*, distance between two classes of lands by

itself cannot derogate the claim of the claimant in absence of any material showing quality and potentiality to be different. What is emphasized in the said decision by the Supreme Court is that distance between two lands of 5 kms. is not relevant factor but township situated at almost same distance for both the lands is relevant. In the said case, the Reference Court had relied upon the award of a nearby land. The High Court also relied upon it but reduced the compensation on the ground that area of acquired land was large and that land under award was 5 kms. away. While reversing the decision of this High Court, the Supreme Court has held that the High Court had committed error in reducing the compensation on this ground.

12. On overall view of the evidence, this Court is of the opinion that the assertion made by witness Kanubhai that the quality and potentiality of the lands of village Sanjroli and the lands of village Khadgada were similar was never challenged by the acquiring body. Under the circumstances, the previous award of

the Reference Court which was a relevant piece of evidence was rightly relied upon by the learned Judge of the Reference Court for the purpose of enhancing the compensation payable to the claimants. It is well settled principle of law that if there is time gap between the Notification published for acquiring the lands of the adjoining area and the lands in respect of which the award is to be rendered, reasonable rise in price at the rate of 10% should be granted to the claimants. The Reference Court has granted reasonable rise in price of lands at the rate of 10%. This rise is not given cumulatively and therefore, that part of the award also cannot be considered to be erroneous.

13. The learned Government Pleader has failed to point out any serious infirmity in the common Judgment and award challenged in these Appeals warranting interference of this Court in the instant Appeals. The appeals therefore, which lack merits, deserve to be dismissed.

14. For the foregoing reasons, all the Appeals fail

and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this Judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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